

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Case No. 3:12-cv-00826-HEH

DR. LINDA NOEL-BATISTE

v.

VIRGINIA STATE UNIVERSITY

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**PLAINTIFF'S RESPONSE TO THE DEFENDANT'S
SPECIAL PLEA IN BAR OF SOVEREIGN IMMUNITY**

The plaintiff, Dr. Linda Noel-Batiste, respectfully submits this Response to the Defendant's Special Plea in Bar of Sovereign Immunity to the first count of the plaintiff's Motion for Judgment, her breach of contract claim. The plaintiff denies the defendant's allegation that the doctrine of sovereign immunity precludes recovery from the defendant for the plaintiff's breach of contract claim. The defendant alleges that the plaintiff failed to notify the Commonwealth of her claim as required by statute, and that the plaintiff's Motion for Judgment does not allege that the plaintiff complied with Va. Code § 2.2-814(A). The standard of review for the defendant's allegation is well-settled. The Court is required to consider as true all material facts that are properly pleaded, facts which are impliedly alleged, and facts which may be fairly and justly inferred from the facts alleged." *Luckett v. Jennings*, 246 Va. at 307, 435 S.E.2d at 402; *see also Rosillo v. Winters*, 235 Va. 268, 270, 367 S.E.2d 717, 717 (1988). Under Va. Code § 2.2-814(A), the plaintiff was required to present her claim to the head of the department responsible for the act or omission, which if proved, gives rise to her claim. The facts alleged in Paragraph 9 of her Motion for Judgment clearly state that the plaintiff brought her claim

to the head of the department responsible for the act or omission in this case, the Dean of the School of Liberal Arts and Education, Dr. W. Weldon Hill. Since the plaintiff's allegations must be taken as true, the sole question before the Court on the defendant's Special Plea in Bar of Sovereign Immunity is whether the plaintiff would be entitled to relief if she proves her allegations at trial. Undoubtedly, the question must be answered in the affirmative. Accordingly, this Court must deny the defendant's Special Plea in Bar of Sovereign Immunity.

Dr. Linda Noel-Batiste

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th Day of December, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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